

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN R. DEMOS, Jr.,

No. 2:20-cv-01653 GGH P

Petitioner,

ORDER

v.  
THE GOVERNOR OF WASHINGTON, et  
al.,

Respondents.

Petitioner, a state prisoner proceeding in pro se, has filed an application for a writ of habeas petition pursuant to 28 U.S.C. §§ 2254 and 2241, together with a request to proceed in forma pauperis. This court will not rule on petitioner's request to proceed in forma pauperis.

Petitioner is presently confined in Washington State Penitentiary in Walla Walla, Washington. The petition appears to contest two indictments: See: Case No. 1:20-cv-00104-BLW (D. Idaho), and Case No. 2:15-cv-0204-CKD-HC (E.D. Cal). See ECF No. 1 at 2. Specifically, Demos v. United States, et al., No. 2:15-cv-0204-CKD-HC, a habeas action, challenged criminal proceedings in the Yakima County Superior Court. Here, it appears petitioner seeks to contest his current place of confinement in a Washington state prison based on his ongoing criminal proceedings in Yakima County Superior Court. See ECF No. 1 at 4 ("Demos should be housed in a federal facility and not a so-called state facility[.]") Petitioner argues that *he has not been convicted* and is a " 'pre-trial detainee' [and] is not a 'prisoner[.]' " Id. at 5

1 (emphasis added). Petitioner argues he should be transferred from a state prison facility to a  
 2 federal prison facility. Petitioner further argues this court has proper jurisdiction to adjudicate this  
 3 matter because it has decided an issue affecting the terms of his sentence, ruling him a “federal  
 4 detainee” in its previous order in Demos v. United States, et al., No. 2:15-cv-0204-CKD-HC. Id.  
 5 at 3-4.<sup>1</sup>

6 Habeas is the “exclusive remedy” for a prisoner who seeks “immediate or speedier  
 7 release” from confinement. Skinner v. Switzer, 131 S. Ct. 1289, 1293 (2011). State prisoners may  
 8 challenge the lawfulness of their confinement pursuant to 28 U.S.C. §§ 2241 and 2254. Habeas  
 9 relief pursuant to 28 U.S.C. § 2241 extends to a person in custody under the authority of the  
 10 United States. See 28 U.S.C. § 2241. Habeas relief pursuant to 28 U.S.C. § 2254 may be granted  
 11 to a person in custody pursuant to the judgment of a state court only on the ground that the  
 12 custody violates the Constitution, laws, or treaties of the United States. See 28 U.S.C. § 2254. In  
 13 both instances, petitioner must name the proper respondent in his habeas corpus petition. Failure  
 14 to name the proper respondent deprives district courts of personal jurisdiction. Id. (citing Dunne  
 15 v. Henman, 875 F.2d 244, 249 (9th Cir.1989)). When a petitioner files a § 2241 habeas corpus  
 16 petition challenging his “present physical confinement, the default rule is that the proper  
 17 respondent is the warden of the facility where the prisoner is being held[.]” Rumsfeld v. Padilla,  
 18 542 U.S. 426, 427, 124 S. Ct. 2711 (2004). See also Hernandez v. Campbell, 204 F.3d 861, 864  
 19 (9th Cir. 2000) (“Generally, motions to contest the legality of a sentence must be filed under §  
 20 2255 in the sentencing court, while petitions that challenge the manner, location, or conditions of  
 21 a sentence's execution must be brought pursuant to § 2241 in the custodial court.”). When  
 22 proceeding on a § 2254 habeas corpus petition, the petition must name as respondent the state  
 23 officer who has custody. Rule 2(b) of the Rules Governing Habeas Corpus Cases Under Section  
 24 2254. “This person typically is the warden of the facility in which the petitioner is incarcerated.”  
 25 Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (citing Brittingham v.

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26 <sup>1</sup> The court in Demos v. United States, et al., No. 2:15-cv-0204-CKD-HC transferred the action to  
 27 the United States District Court for the Eastern District of Washington where petitioner's  
 28 conviction arose. Whatever characterization of plaintiff the Demos court used to effectuate the  
 transfer is irrelevant to whether this court presently has jurisdiction.

1        United States, 982 F.2d 378, 379 (9th Cir.1992)). Moreover, “Braden in no way authorizes  
 2        district courts to employ long-arm statutes to gain jurisdiction over custodians who are outside of  
 3        their territorial jurisdiction.” Rumsfeld v. Padilla, 542 U.S. 426, 445, 124 S. Ct. 2711 (2004)  
 4        (citing Braden v. 30th Judicial Circuit Court, 410 U.S. 484 (1973)). Petitioner’s attempts to name  
 5        the Governor of California as respondent<sup>2</sup>, and invoke the long arm statute as to the Governor of  
 6        Washington, see ECF No. 1 at 1, 3, is inappropriate to gain jurisdiction in this district court.

7                The general rule with regard to habeas applications is that both the United States District  
 8        Court in the district where petitioner was convicted and the District Court where petitioner is  
 9        incarcerated have jurisdiction over the claims. See Braden v. 30th Judicial Circuit Court, 410 U.S.  
 10        484 (1973). In the instant case, both petitioner’s conviction and his place of incarceration  
 11        occurred in an area covered by the District Court for the Eastern District of Washington.

12                Accordingly, in the furtherance of justice, IT IS HEREBY ORDERED that:

13                1. The court has not ruled on petitioner’s application to proceed in forma pauperis (ECF  
 14        No. 2); and

15                2. This matter is transferred to the United States District Court for the Eastern District of  
 16        Washington. Id. at 499 n.15; 28 U.S.C. § 2241(d).

17        Dated: September 22, 2020

18                /s/ Gregory G. Hollows  
 19                UNITED STATES MAGISTRATE JUDGE

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 27        <sup>2</sup> Naming the Governor of California is a spurious denomination in that the Governor of  
 28        California could not possibly be petitioner’s custodian, i.e., he has no authority whatsoever over  
 petitioner’s present incarceration.